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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 ANDRE KING-HARDIMAN,

Case No. 3:19-cv-00484-MMD-WGC

7 Petitioner,

ORDER

8 v.

9 GITTERE, *et al.*,

10 Respondents.
11

12 The Federal Public Defender has filed a notice of appearance on behalf of
13 Petitioner Andre King-Hardiman (ECF No. 15) in this habeas corpus matter under 28
14 U.S.C. § 2254.

15 It therefore is ordered that the Federal Public Defender is appointed as counsel for
16 Petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent Petitioner in all
17 federal proceedings related to this matter, including any appeals or certiorari proceedings,
18 unless allowed to withdraw.

19 It further is ordered that Petitioner will have until up to and including 60 days from
20 entry of this order within which to file an amended petition and/or seek other appropriate
21 relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any
22 implied finding as to the expiration of the federal limitation period and/or of a basis for
23 tolling during the time period established. Petitioner always remains responsible for
24 calculating the running of the federal limitation period and timely asserting claims, without
25 regard to any deadlines established or extensions granted herein. That is, by setting a
26 deadline to amend the petition and/or by granting any extension thereof, the Court makes
27 no finding or representation that the petition, any amendments thereto, and/or any claims
28 contained therein are not subject to dismissal as untimely. *See Sossa v. Diaz*, 729 F.3d

1 1225, 1235 (9th Cir. 2013).

2 It further is ordered that Respondents will file a response to the amended petition,
3 including potentially by motion to dismiss, within 60 days of service of an amended petition
4 and that Petitioner may file a reply within 30 days of service of an answer. The response
5 and reply time to any motion filed by either party, including a motion filed in lieu of a
6 pleading, will be governed instead by LR 7-2(b).

7 It further is ordered that any procedural defenses raised by Respondents to the
8 counseled amended petition must be raised together in a single consolidated motion to
9 dismiss. In other words, the Court does not wish to address any procedural defenses
10 raised herein either in serial fashion in multiple successive motions to dismiss or
11 embedded in the answer. Procedural defenses omitted from such motion to dismiss will
12 be subject to potential waiver. Respondents may not file a response in this case that
13 consolidates their procedural defenses, if any, with their response on the merits, except
14 pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
15 Respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they must
16 do so within the single motion to dismiss not in the answer; and (b) they must specifically
17 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett*
18 *v. Stewart*, 406 F.3d 614, 623–24 (9th Cir. 2005). In short, no procedural defenses,
19 including exhaustion, may be included with the merits in an answer. All procedural
20 defenses, including exhaustion, instead must be raised by motion to dismiss.

21 It further is ordered that, in any answer filed on the merits, Respondents must
22 specifically cite to and address the applicable state court written decision and state court
23 record materials, if any, regarding each claim within the response as to that claim.

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1 It further is ordered that, notwithstanding LR IC 2-2(g), paper copies of any
2 electronically filed exhibits need not be provided to chambers or to the staff attorney,
3 unless later directed by the Court.

4 DATED THIS 16th day of March 2020.

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MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE